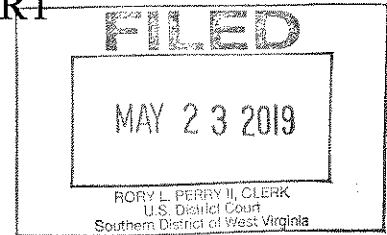


UNITED STATES DISTRICT COURT

for the

Southern District of West Virginia



ROYCE THERMON JOHNSON

Petitioner

v.

WARDEN, FCI McDowell

Respondent

(name of warden or authorized person having custody of petitioner)

Case No.

1:19-cv-00403

(Supplied by Clerk of Court)

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Personal Information

1. (a) Your full name: A +
 (b) Other names you have used: Royce Thermon Johnson
2. Place of confinement:
 (a) Name of institution: FCI McDowell
 (b) Address: P.O. Box 1009
Welch, WV 24801
 (c) Your identification number: Reg. No. 32445-001
3. Are you currently being held on orders by:
☒ Federal authorities ☐ State authorities ☐ Other - explain:
4. Are you currently:
☐ A pretrial detainee (waiting for trial on criminal charges)
☒ Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime
 If you are currently serving a sentence, provide:
 (a) Name and location of court that sentenced you: Northern District of Alabama (Southern)
 (b) Docket number of criminal case: 2:15-cr-00283-LSC-HNJ-9
 (c) Date of sentencing: 09/27/2016
☐ Being held on an immigration charge
☐ Other (explain):

Decision or Action You Are Challenging

5. What are you challenging in this petition:

- ☐ How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)
- ☐ Pretrial detention
- ☐ Immigration detention
- ☐ Detainer
- ☐ The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)
- ☐ Disciplinary proceedings
- ☒ Other (explain): _____

Sentence Enhancement

6. Provide more information about the decision or action you are challenging:

(a) Name and location of the agency or court: Northern District of Alabama (Southern)

(b) Docket number, case number, or opinion number: 2:15-cr-00283-LSC-HNJ-9

(c) Decision or action you are challenging (for disciplinary proceedings, specify the penalties imposed):
851 and Career Offender Enhancements

(d) Date of the decision or action: 09/28/2016

Your Earlier Challenges of the Decision or Action

7. **First appeal**

Did you appeal the decision, file a grievance, or seek an administrative remedy?

☒ Yes ☐ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: United States Court of Appeals for the Eleventh Circuit

(2) Date of filing: 09/29/2016

(3) Docket number, case number, or opinion number: No. 16-16300

(4) Result: Affirmed

(5) Date of result: 11/17/2017

(6) Issues raised: Counsel filed an Anders Brief.

(b) If you answered "No," explain why you did not appeal: _____

8. **Second appeal**

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

☐ Yes ☒ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: N/A

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not file a second appeal: N/A

9. **Third appeal**

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

☐ Yes ☒ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court: N/A

(2) Date of filing: _____

(3) Docket number, case number, or opinion number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) If you answered "No," explain why you did not file a third appeal: N/A

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

☐ Yes ☒ No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

☐ Yes ☒ No

If "Yes," provide:

(1) Name of court: N/A

(2) Case number: _____

(3) Date of filing: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

(b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

☐ Yes ☒ No

If "Yes," provide:

(1) Name of court: _____

(2) Case number: _____

(3) Date of filing: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

- (c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence: § 2255 is inadequate or ineffective by satisfying four conditions:
- (1) "the existence of a new interpretation of statutory law,"
 - (2) "issued after the petitioner had a meaningful time to incorporate the new interpretation into his direct appeals or subsequent motions,"
 - (3) that is retroactive, and
 - (4) applies to the petition's merits such that it is "more likely than not that no reasonable juror would have convicted" the petitioner.

11. **Appeals of immigration proceedings**

Does this case concern immigration proceedings?

☐ Yes

☒ No

If "Yes," provide:

- (a) Date you were taken into immigration custody: _____
- (b) Date of the removal or reinstatement order: _____
- (c) Did you file an appeal with the Board of Immigration Appeals?

☐ Yes

☒ No

If "Yes," provide:

- (1) Date of filing: _____
- (2) Case number: _____
- (3) Result: _____
- (4) Date of result: _____
- (5) Issues raised: _____

- (d) Did you appeal the decision to the United States Court of Appeals?

☐ Yes

☐ No

If "Yes," provide:

- (1) Name of court: N/A
- (2) Date of filing: _____
- (3) Case number: _____

(4) Result: _____

(5) Date of result: _____

(6) Issues raised: _____

12. **Other appeals**

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

☐ Yes ☒ No

If "Yes," provide:

(a) Kind of petition, motion, or application: N/A

(b) Name of the authority, agency, or court: _____

(c) Date of filing: _____

(d) Docket number, case number, or opinion number: _____

(e) Result: _____

(f) Date of result: _____

(g) Issues raised: _____

Grounds for Your Challenge in This Petition

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Johnson's: (1) prior conviction enhancement under 21 U.S.C. § 851 is null and void; and
(2) prior convictions do not qualify him as a career offender requiring resentencing without the career offender
offender enhancement.

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

In light of *Descamps v. United States*, 133 S.Ct. 2276 (2013) and *Mathis v. United States*, 136 S.Ct. 2243 (2016), Johnson's: (1) prior conviction enhancement under 21 U.S.C. § 851 is null and void; and (2) prior convictions do not qualify him as a career offender requiring resentencing without the career offender enhancement.

See Memorandum of Law in Support.

(b) Did you present Ground One in all appeals that were available to you?

☒ Yes

☐ No

GROUND TWO: N/A

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

(b) Did you present Ground Two in all appeals that were available to you?

☐ Yes

☐ No

GROUND THREE: N/A

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

(b) Did you present Ground Three in all appeals that were available to you?

☐ Yes

☐ No

GROUND FOUR: N/A

(a) Supporting facts (*Be brief. Do not cite cases or law.*):

(b) Did you present Ground Four in all appeals that were available to you?

☐ Yes

☐ No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not:
-
-
-

Request for Relief

15. State exactly what you want the court to do: Johnson's sentence must be vacated for resentencing without the 851 and career offender enhancement, Johnson must be resentenced to 120 months. In the alternative, an evidentiary hearing should be held so that Johnson may further prove his meritorious ground for relief, resolve any disputed facts, and expand an incomplete record.
-
-

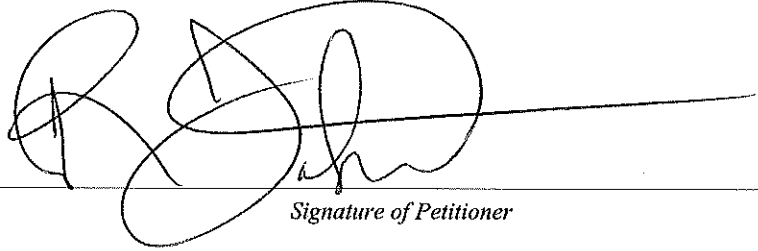
Declaration Under Penalty Of Perjury

If you are incarcerated, on what date did you place this petition in the prison mail system:

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date:

5-21-19

A handwritten signature in black ink, consisting of a large, stylized 'R' followed by a cursive 'S' and a long horizontal line extending to the right.

Signature of Petitioner

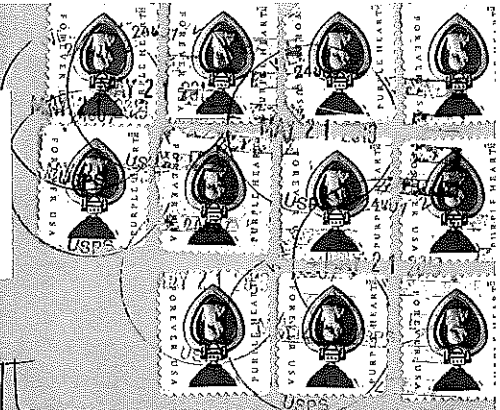
N/A

Signature of Attorney or other authorized person, if any

Koyce Johnson # 32445-001
Federal Correction Institute (McDowell)
P.O. Box 1009
Welch, WV 24801



U.S. POSTAGE PAID
FCM LG ENV
WELCH, WV
24801
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\$0.00
R2305K141309-10



Mr. Rory L. Perry II
Clerk of Court
U.S. District Court
Southern District of West Virginia
Bluefield Division
601 Federal Street, Room 1000
Bluefield, WV 24701

"Legal Mail"

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DATE

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THE WRITER INC
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LETTER WAS PROCESSED THROUGH
PROCEDURES FOR FORWARDING TO
HAS BEEN NEITHER OPENED NOR TO
WRITER RAISES QUESTION FOR
THIS FACILITY HAS JURY OR
NATION OR CLARIFICATION
FOR ADDRESSING IF
TO THE ADDRESS
PLEASE